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10/035,726	11/09/2001	Shaffiq Amin Jaffer	8773	4129

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THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL TECHNICAL CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER

LEYSON, JOSEPH S

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 07/03/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/035,726

Applicant(s)

JAFFER ET AL.

Examiner

Joseph Leyson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1, 4, 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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1. Claim 4 is objected to because of the following informalities: In claim 4, "rectilearly" should be changed to --rectilinearly-- for proper spelling. Appropriate correction is required.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 10-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 recites "said die having a first die inlet and at least one auxiliary inlet to said die at least one auxiliary inlet admitting flowable material into the die" which is indefinite as to its metes and bounds and incorrect. The examiner suggests changing it to --said die having a first die inlet, a second die inlet, and at least one auxiliary inlet to the die admitting flowable material into the die--.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6, 9-12, 15 and 16 are rejected under 35

U.S.C. 102(b) as being anticipated by Hill et al.(-041).

Hill et al.(-041) teach a die, that corresponds to the instant die, for extruding flowable material therethrough in a longitudinal direction, the die having a first die inlet 16 and a second die inlet 24, 26, and at least one auxiliary inlet 24, 26 to the die, each for admitting flowable material into the die, a die outlet 22 for expelling the flowable material from the die, the die having a cavity 18 longitudinally connecting the first die inlet 16 and the die outlet 22, the first die inlet 16 and the second die inlet 24, 26 being spaced apart from each other. The second die inlet 24, 26 is longitudinally downstream of the first die inlet 16. The die having a plurality of auxiliary inlets 24, 26, the plurality of auxiliary inlets 24, 26 being longitudinally downstream of the first die inlet 16 having a first die inlet cross sectional area, the auxiliary inlets 24, 26 having a combined cross sectional area less than the first die inlet cross sectional area (see figs. 1-3). The plurality of auxiliary inlets 24,26 is rectilinearly disposed in bank, the bank being substantially perpendicular to the longitudinal direction (figs. 1 and 2). The auxiliary

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inlets 24, 26 are unequally spaced from each other in the depth direction (col. 2, lines 21-25; figs. 1 and 2). The die including a first bank of auxiliary inlets 24, 26 and at least a second bank of auxiliary inlets 24, 26, the first bank and the second bank being longitudinally spaced apart from each other (figs. 1 and 2). Insert tubes 26 extend from the auxiliary inlets 24 to the cavity 18. Each insert tube 26 having a distal end, the distal ends of the insert tubes 26 being staggered in the longitudinal direction (figs. 1 and 2). The die having a cross direction orthogonal to the longitudinal direction and a plurality of insert tubes 26, each insert tube 26 having a distal end, the distal ends of the insert tubes 26 being staggered in the cross direction (figs. 1 and 2). The inlet tubes 26 define a plurality of bars which act as a static mixer directing flow in a cross direction.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill et al.(-041).

Hill et al.(-041) disclose the die substantially as claimed as mentioned above, except for the first plurality of auxiliary inlets including a first number of auxiliary inlets and the second plurality of auxiliary inlets including a second number of auxiliary inlets, the first number of auxiliary inlets being different than the second number of auxiliary inlets; or for the first plurality of auxiliary inlets including auxiliary inlets having a first size and the second plurality of auxiliary inlets including auxiliary inlets having a second size, the first size of the first plurality of auxiliary inlets being different than

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the second size of the second plurality of auxiliary inlets. However, Hill et al.(-041) disclose that the auxiliary inlets 26 are spaced, shaped and sized depending on the desired ornamental effect (col. 2, lines 14-53; col. 3, lines 17-63), i.e., the spacing (which affects the number of inlets), shape and size of the second material 39 in the first material 38. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the first plurality of auxiliary inlets to include a first number of auxiliary inlets and the second plurality of auxiliary inlets to include a second number of auxiliary inlets, the first number of auxiliary inlets being different than the second number of auxiliary inlets; or to modify the first plurality of auxiliary inlets to include auxiliary inlets having a first size and the second plurality of auxiliary inlets to include auxiliary inlets having a second size, the first size of the first plurality of auxiliary inlets being different than the second size of the second plurality of auxiliary inlets, because such modifications would have been found depending upon the desired ornamental effect in view of the teachings of Hill et al.(-041).

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple



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assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No.

10/035,720 in view of Hill et al.(-041). Claims 1-20 disclose the die substantially as claimed except for the second die inlet and/or auxiliary inlets. Hill et al.(-041) discloses a die as mentioned above. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the die of claims 1-20 of copending Application No. 10/035,720 with a second die inlet and/or auxiliary inlets because such a modification would enable an ornamental product to be produced as disclosed by Hill et al.(-041).

This is a provisional obviousness-type double patenting rejection.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Buckley et



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al.(-425), Lefevre et al.(-737), Wissinger et al.(-386) and Webermeier et al.(-951) are cited as of interest.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Leyson whose telephone number is (703) 308-2647. The examiner can normally be reached on M-F(8:30-6:00) First Friday Off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (703) 308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

*jl*

jl  
June 27, 2003

*James P. Mackey*  
JAMES P. MACKEY  
PRIMARY EXAMINER

6/27/03